

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	87 CR 941	DATE	9/21/2000
CASE TITLE	USA vs. Barry Wenger		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. Accordingly this court can take no action on Wenger's current letter. And if it were to be treated as a motion, it would have to be denied because of his failure to conform to the statutory requirement.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	<div style="text-align: center;"> ED-7  FILED FOR DOCKETING  00 SEP 22 PM 4:28 </div>	number of notices	<div style="text-align: center;"> SEP 25 2000  date docketed  <i>PP</i>  docketing deputy initials  9/22/2000  date mailed notice  SN  mailing deputy initials </div>	Document Number
<input type="checkbox"/>	No notices required.				
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.				
<input type="checkbox"/>	Notified counsel by telephone.				
<input type="checkbox"/>	Docketing to mail notices.				
<input type="checkbox"/>	Mail AO 450 form.				
<input type="checkbox"/>	Copy to judge/magistrate judge.				
SN		courtroom deputy's initials			
			Date/time received in central Clerk's Office		

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BARRY WENGER,

Defendant.

No. 87 CR 941

DOCKETED  
SEP 23 2000

MEMORANDUM ORDER

Barry Wenger ("Wenger") has just submitted a letter that couples some information about his current status with a request for this Court's assistance by the entry of an order that would reject the United States Parole Commission's calculation of his out-date on the custodial sentence that he is now serving. One of the several complexities posed by that request stems from the fact that Wenger has been convicted and sentenced for different felonies, not only by this Court but by its colleague Honorable Charles Norgle, so that there is a question whether any relief that he wishes to obtain should be sought before this Court or before Judge Norgle. But for present purposes it is unnecessary (indeed, it would be inappropriate) to examine any such complexities or any aspects of the merits of Wenger's contentions, because this Court is not in a position to entertain Wenger's motion in any event.

Whatever else may be said about Wenger's filing, he is unquestionably seeking relief that would affect his custodial

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time--relief that by definition comes under the rubric of habeas corpus relief. But Wenger has previously sought, and has previously been denied, habeas relief in a case before Judge Barbara Crabb in the United States District Court for the Western District of Wisconsin. Judge Crabb's August 4, 1999 order in Case No. 99 C 0273C denied Wenger's then-advanced claims on the merits, and on June 28 of this year our Court of Appeals issued an unpublished order (reported in table at 221 F.3d 1340) affirming Judge Crabb's December 10, 1999 denial of Wenger's motion for reconsideration.

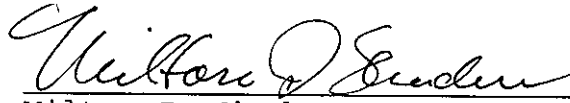
All of that being so, Wenger's current request comes squarely within the provision of 28 U.S.C. §2244(b)(3)(A) that he must first "move in the appropriate court of appeals for an order authorizing the district court to consider the application." That statute has established a bright-line rule (see, e.g., Potts v. United States, 210 F.3d 770, 770 (7<sup>th</sup> Cir. 2000) and cases cited there) that forbid any district court filing of such a "second or successive application" until he has sought and obtained such permission from our Court of Appeals.<sup>1</sup>

Accordingly this Court can take no action on Wenger's current letter. And if it were to be treated as a motion, it

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<sup>1</sup> Indeed, on November 9, 1999 this Court rejected an earlier effort by Wenger along the lines of his present application, pointing even at that time to Judge Crabb's then-pending case and to Section 2244(b)(3).

would have to be denied because of his failure to conform to the statutory requirement.<sup>2</sup>

A handwritten signature in cursive script, reading "Milton I. Shadur".

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Milton I. Shadur  
Senior United States District Judge

Date: September 21, 2000

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<sup>2</sup> Nonetheless, so that the record in connection with Wenger's present submission is complete, this Court is contemporaneously delivering his letter to the Clerk of Court for placement in the court records.